

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO.: 3:11-cv-330-RJC-DSC**

FRANK KAUER and)
ACCESS ASIA (H.K.) LIMITED,)
)
Plaintiffs,)
)
v.)
)
NOSTALGIA PRODUCTS GROUP, LLC)
)
Defendant.)

ORDER

THIS MATTER is before the Court on Defendant’s “Motion for Leave to File Amended Answer to Complaint and Counterclaim” (document #35), “Motion for Leave to File Under Seal Exhibits 2, 3, 4 and 5 to the Declaration of Dennis G. Martin [filed in Support of Motion for Leave to Amend]” (document #33), and “Motion for Hearing” (document #41), as well the parties’ associated briefs and exhibits. See documents ##34 and 36-40.

Defendant seeks to assert an eighth affirmative defense for set-off in response to Plaintiff’s claim for patent infringement. The Court has carefully reviewed the parties’ submissions and the applicable authority. For the reasons stated in Defendant’s Motion and briefs, the Court will grant the Motion.

As Defendant clarifies in its Reply, due to a scrivener’s error, the proposed Amended Answer and Counterclaim (document #35-1) contains amended second and seventh affirmative defenses. Defendant did not intend to submit these amendments and stipulates that they may be stricken. Rather than strike them, the Court will direct Defendant to file a corrected amended pleading with the extraneous material removed.

NOW, THEREFORE IT IS HEREBY ORDERED that:

1. Defendant's "Motion for Leave to File Under Seal Exhibits 2, 3, 4 and 5 to the Declaration of Dennis G. Martin" (document #33) is **GRANTED**.

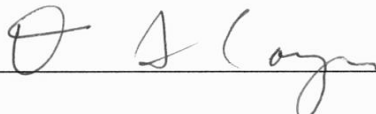
2. Defendant's "Motion for Hearing" (document #41) is **DENIED AS MOOT**.

3. Defendant's "Motion for Leave to File Amended Answer to Complaint and Counterclaim" (document #35) is **GRANTED**. Defendant shall file its First Amended Answer to Complaint and Counterclaims within five (5) days of the entry of this Order.

4. The Clerk of Court is directed to send copies of this Order to the parties' counsel; and to the Honorable Robert J. Conrad, Jr.

SO ORDERED.

Signed: February 27, 2013



David S. Cayer
United States Magistrate Judge

